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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of MULK and REKHA CHANDNA.	B185254 (Los Angeles County Super. Ct. No. BD 317142)
MULK CHANDNA, Appellant, v. REKHA CHANDNA, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Eli Chernow, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

F. James Feffer for Appellant.

Arias & Lockwood, Christopher D. Lockwood; Haslam & Perri and Brian G. Thorne for Respondent.

* * * * * *

A judgment dissolving the marriage between the parties to this appeal, based on a settlement negotiated by their lawyers, was entered on August 19, 2004. On January 13, 2005, appellant Mulk Chandna, formerly the husband, filed a motion to set aside the judgment. The same judge, retired judge Eli Chernow, who presided over the settlement and the entry of judgment, denied the motion. We affirm.

FACTS

Appellant and respondent, Rekha Chandna,[1] were married in 1975 and separated in 1993. In 1997, respondent obtained a default judgment in Nevada dissolving the marriage; the Nevada court set aside this judgment in October 2000 because it was procured by misrepresentations made by respondent.

Appellant filed in California for dissolution of the marriage in February 2000. (It appears he learned of the Nevada proceedings and judgment only in March 2000.) Three conferences took place between the parties during 2004 in which Judge Chernow was also involved. The point of these conferences was either to settle the matter or to narrow the issues for trial. The parties were represented by counsel throughout; attorney Carl Osborne was appellant's lawyer. These conferences led to three stipulations that were entered into in April and July 2004.

The first of the two stipulations entered into in April 2004 is the one that is germane to this appeal. Among other things, this stipulation provided that the funds received by respondent from refinancing three parcels of property were to be treated as an advance of community property distributed to respondent. The sum so obtained by respondent was $184,154.04. This stipulation, as well as the other two, are signed by appellant and respondent, their lawyers, and by Judge Chernow.

The matter came to trial before Judge Chernow on August 3, 2004. It developed, however, that the parties entered into productive settlement discussions before the trial got under way. The parties, who continued to be represented by counsel, were able to

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[1] The judgment of dissolution restored her former name, Rekha Chopra, but she appears in this appeal under her former married name.

reach an agreement and the terms of the settlement were placed on the record shortly after 5:00 p.m.

Under the settlement, appellant received approximately $149,500 and respondent received $148,694. The three parcels of property that respondent had refinanced, and from which she obtained $184,154.04, were to be sold and the proceeds were to be equally divided, with respondent agreeing to pay the debt service on the three parcels. The settlement made no mention of the provision of the April 2004 stipulation under which the $184,154.04 was to be treated as an advance from community property received by respondent.

Appellant's petition to vacate the judgment alleges that, at the time the settlement was discussed and entered into on August 3, 2004, no one discussed with appellant that he was waiving his right to charge respondent as having received $184,154.04 from community assets.

Appellant's petition was heard by Judge Chernow on June 15, 2005. Attorney Osborne testified at this hearing. According to Osborne, the credit of $184,154.04 was specifically discussed between counsel, and by Osborne with appellant. Under the settlement, respondent agreed to pay off all the encumbrances on the three parcels of property from which she had obtained the sum of $184,154.04, and appellant was to receive his share of the proceeds of the sales of these three parcels free and clear of any encumbrances. This was agreed upon, according to Osborne, specifically in order to provide for the charge of $184,154.04 under the April 2004 stipulation. In other words, instead of being charged with having received $184,154.04 of community assets, respondent paid off the encumbrances on these three parcels.

Judge Chernow denied the petition, giving his reasons in a statement of decision signed in November 2005. Judge Chernow found that the settlement entered into in August 2004 was very favorable to appellant, that attorney Osborne explained the settlement to appellant, and that appellant understood the terms of the settlement.

DISCUSSION

We find no merit in appellant's contention that attorney Osborne should not have testified because appellant did not waive the attorney-client privilege. When, as in this instance, the client puts the substance of protected communication at issue, the courts will imply a waiver of the attorney-client privilege. (*Southern Cal. Gas Co. v. Public Utilities Com.* (1990) 50 Cal.3d 31, 40; see generally 2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 151, pp. 420-422.)

Appellant states in his brief that ". . . the evidence establishes that the settlement was (from Husband's standpoint) hastily presented and approved without a full opportunity at reflection." There is no citation to the record where this "evidence" is to be found. "Statements of facts not supported by references to the record may be disregarded as a violation of rule 14(a)(1)(C)[2] of the California Rules of Court." (*Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 451.) Accordingly, we reject this contention as not supported by the record. For the same reason, i.e., because it is not supported with a reference to the record, we reject the claim that attorney Osborne refused to speak to appellant.

In any event, it appears that the settlement took most of the day to negotiate and present to the clients; thus, it can hardly be said that it was hastily presented without a full opportunity to reflect on its terms. In fact, Osborne testified that he explained to appellant, and discussed with him, the provision of the settlement that appellant now claims he was not informed about. The record of the proceedings when the settlement was put on the record corroborates Osborne's testimony. The court addressed appellant directly, and inquired whether he had had an adequate opportunity to talk to his lawyer. Appellant answered in the affirmative, and also stated that he understood and agreed with the terms of the settlement.

Appellant's claim that the court abused its discretion in denying his motion is affirmatively refuted by the record. Appellant obtained a favorable settlement, he was

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2 Now California Rules of Court, rule 8.204(a)(1)(C).

fully and well-advised by his counsel, and he cannot now repudiate the settlement that he entered into on August 3, 2004.

DISPOSITION

The order denying the motion to vacate the judgment is affirmed. Respondent is to recover her costs on appeal.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BOLAND, J.